

## TECHNICAL INFORMATION RELEASE

# TIR 19-5: Spousal Relief From Joint Income Tax Liability

DATE:

05/13/2019

## REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (<https://malegislature.gov/Laws/GeneralLaws>)

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## I. Introduction

On January 10, 2019, An Act Providing for Equitable Relief from Liability for Joint Filers of Tax Returns (the “Act”) was signed into law.<sup>[\[1\]](#)</sup> The Act substantially revises the provisions of G.L. c. 62C, § 84, which provide state tax relief to joint filers of tax returns,

and brings Massachusetts law more in line with federal provisions providing similar relief from federal tax liabilities. See Internal Revenue Code § 6015. The Act takes effect April 10, 2019.<sup>[\[2\]](#) (#\_ftn2)</sup> This Technical Information Release (“TIR”) is intended to explain the provisions of G.L. c. 62C, § 84 as amended by the Act.

## II. Discussion

In general, under G.L. c. 62C, § 6(a), each spouse is jointly and severally liable for the entire amount of tax due on a jointly filed return. However, G.L. c. 62C, § 84 allows for relief from joint tax liability for an individual (an “innocent spouse”) where certain criteria are met. Under the Act, there are now three types of relief from joint tax liability available to an innocent spouse, consistent with the three types of federal relief available: innocent spouse relief, separation of liability relief, and equitable relief, each with its own requirements, as further explained below. Prior to the Act, only the first type of relief was available in Massachusetts.

### A. Innocent Spouse Relief

An innocent spouse who has filed a joint return will be relieved of liability for an understatement of tax, including interest and penalties, for the taxable year for which the understatement was reported where the following requirements are met:

- (i) The understatement is attributable to “erroneous items of the other individual filing the joint return”<sup>[\[3\]](#) (#\_ftn1)</sup> (prior to the Act, the understatement of tax had to be “substantial” and attributable to “grossly” erroneous items of the other spouse);
- (ii) The innocent spouse establishes that, in signing the return, he or she did not know, and did not have reason to know, that there was an understatement;
- (iii) Taking into account all the facts and circumstances, it is inequitable to hold the innocent spouse liable for the deficiency in tax for such taxable year attributable to the understatement; and

(iv) The individual seeking relief from liability elects innocent spouse relief not later than two years after the Department has begun collection activities with respect to the individual.<sup>[\[4\]](#) ([#\\_ftn2](#))</sup>

## B. Separation of Liability Relief

Consistent with the federal innocent spouse rules, the Act amended G.L. c. 62C, § 84 to provide that an innocent spouse's tax liability may be limited to the portion of the tax deficiency that is "properly allocable" to the innocent spouse, if so elected by the innocent spouse. This relief is only available if "at the time the election is filed, the individual is no longer married to, or is legally separated from, the individual with whom the individual filed the joint return to which the election relates" or "was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed."<sup>[\[5\]](#) ([#\\_ftn3](#))</sup> An election for separation of liability relief for any taxable year may be made at any time after a deficiency for the year is asserted but not more than two years after the Department of Revenue (the "Department") has begun collection activities with respect to the individual making the election.<sup>[\[6\]](#) ([#\\_ftn4](#))</sup> G.L. c. 62C, § 84(c) paragraphs (8) through (12) set out the general rules for allocation of items between spouses.

If the Department demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by the individuals, neither spouse may make an election for separation of liability relief.

## C. Equitable Relief

Also consistent with the federal innocent spouse rules, the Act amended G.L. c. 62C, § 84 to provide an avenue for relief if neither innocent spouse relief nor separation of liability relief is available under G.L. c. 62C, § 84(b) or (c). In such case, if the Department determines that it is inequitable to hold the innocent spouse liable for any unpaid tax or deficiency, the Department has discretionary authority to relieve the innocent spouse of the liability.<sup>[\[7\]](#) ([#\\_ftn5](#))</sup>

# III. Procedures for Claiming Relief

## A. Application Process

Except as described in the transition rules below, a taxpayer seeking relief generally must do so by filing Form 84, Application for Relief from Joint Tax Liability, along with Form ABT, Application for Abatement, with the Department. Applications for innocent spouse relief or separation of liability relief must be filed not later than two years after the Department has begun collection activities with respect to the individual.

The Act provides the non-requesting spouse with the opportunity to have notice of, and participate in, any administrative proceedings pertaining to the requesting spouse's request for relief. Consistent with the analogous federal rules, the non-requesting spouse can submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability.

## B. Transition Rules for Applications for Relief for 2019

In order to ease compliance with the new provisions for spousal relief from joint income tax liability, the following transition rules shall apply:

- A taxpayer applying for relief from joint income tax liability who has filed Form 84, Application for Relief from Joint Income Tax Liability, together with Form ABT, Application for Abatement, and whose application is still pending with the Department on or after April 10, 2019 shall be considered to have submitted such application based upon the provisions of G.L. c. 62C, § 84, as amended by the Act. Similarly, any timely petition for relief that is pending at the Appellate Tax Board on or after April 10, 2019 will also be considered based upon the provisions of G.L. c. 62C, § 84, as amended by the Act. The Department will not reconsider a claim for relief under the amended rules for a taxpayer where a final determination with respect to such relief has been rendered prior to April 10, 2019.
- On or after April 10, 2019, a taxpayer applying for spousal relief from joint income tax liability should file federal Form 8857, Request for Innocent Spouse Relief, with respect

to any of the three types of relief, as well as Form ABT, Application for Abatement, with the Department until the Department completes development of a new Form 84.

The Department anticipates issuing regulatory guidance to explain the administration of the Act in greater detail.

/s/Christopher C. Harding  
Christopher C. Harding  
Commissioner of Revenue

CCH:RHF:ds

May 13, 2019

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[\[1\]](#) ([#\\_ftnref1](#)) St. 2018, c. 445.

[\[2\]](#) ([#\\_ftnref2](#)) The Act does not specify an effective date for the amendments to G.L. c. 62C § 84. By operation of law, legislation without an effective date becomes effective 90 days after the date of enactment, which means the Act will be effective April 10, 2019.

[\[3\]](#) ([#\\_ftnref1](#)) G.L. c. 62C, § 84(b)(1), as amended by the Act.

[\[4\]](#) ([#\\_ftnref2](#)) *Id.* See Treas. Reg. § 1.6015-5(b)(2) for the federal interpretation of the term “collection activity.”

[\[5\]](#) ([#\\_ftnref3](#)) G.L. c. 62C, § 84(c)(3) as amended by the Act.

[\[6\]](#) ([#\\_ftnref4](#)) G.L. c. 62C, § 84(c)(5) as amended by the Act.

[\[7\]](#) ([#\\_ftnref5](#)) G.L. c. 62C, § 84(d) as amended by the Act.

REFERENCED SOURCES:

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